

SCHEDULE 1

Regulation 5(1)

SUBSTITUTED PART III OF THE PRINCIPAL REGULATIONS

“PART III

PRACTICE VACANCIES

*Medical Practices Committee*

**Medical Practices Committee—appointment of members and tenure of office**

**10.**—(1) Subject to paragraphs (2) to (4), the chairman and other members of the Medical Practices Committee shall be appointed for a period of three years expiring on 31st March in any year.

(2) A member may be re-appointed on the expiration of his term of office.

(3) A member may resign by giving notice in writing to the Secretary of State, and a member who is appointed as being a person actively engaged in medical practice shall be deemed to have resigned if he ceases to be so engaged.

(4) In the case of a vacancy in membership occasioned by death or by resignation (including deemed resignation under paragraph (3)), a person shall be appointed to fill the vacancy for the remainder of the period for which his predecessor was appointed, unless the remainder of that period is less than six months, in which case it shall not be necessary to appoint a replacement member until that remaining period has expired.

*Identifying vacancies*

**References and reports to the Medical Practices Committee by a Health Authority**

**11.**—(1) Subject to the following provisions of this regulation and to regulations 18H, 18I and 18J, in any of the circumstances mentioned in paragraph (2), a Health Authority must refer to the Medical Practices Committee, in writing, the question of whether there is, or will be, a vacancy for a doctor in a locality; and any such reference shall be accompanied by a report containing the information set out in Part I of Schedule 3.

(2) The circumstances are that—

- (a) the Authority considers that it is appropriate to make a reference; or
- (b) it has been asked to make a reference by a doctor who provides general medical services in the locality; or
- (c) a doctor has died, or has withdrawn, or been removed, from the Authority’s medical list,

and, in the case of sub-paragraph (b), where more than one request has been received the Health Authority shall make references to the Medical Practices Committee in the order in which such requests have been received by it (or, if such requests have been received at the same time, then in alphabetical order of name of doctor), and the Medical Practices Committee shall consider them in the same order.

(3) Subject to paragraph (4), where a doctor’s prospective patients are situated in the area of more than one Health Authority, any of those Health Authorities may elect to deal separately

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with the prospective patients residing in its area and, where it does so elect, shall then make a reference to the Medical Practices Committee in accordance with paragraph (1).

(4) Where two or more Health Authorities agree to deal jointly with prospective patients residing in their areas, the Health Authority in whose area reside the largest number of the prospective patients of the additional doctor shall make the reference and report to the Medical Practices Committee under paragraph (1) and, where the Medical Practices Committee decides that there is a vacancy for an additional doctor in the locality, shall then (subject to paragraph (6)) proceed to deal with the vacancy in accordance with this Part of these Regulations.

(5) Where paragraph (4) applies, any Health Authority in whose area will reside any patient who is expected to be on the doctor's list of patients (other than the Health Authority which makes the reference pursuant to paragraph (1)) shall make a report to the Medical Practices Committee containing only the information set out in paragraphs 1, 5, 6 and 7 of Part I of Schedule 3, and shall send a copy of that report to the Health Authority making the reference under paragraph (1).

(6) In a case to which paragraph (4) applies, before—

- (a) making a selection of a condition of practice pursuant to regulation 13(3);
- (b) making a decision as to whether an additional doctor should be a member of a partnership or a sole practitioner pursuant to regulation 17(4);
- (c) setting or agreeing criteria pursuant to regulation 18A(4), 18B(2) or (7) or 18D(5); or
- (d) nominating or approving an additional doctor pursuant to regulation 18A, 18B or 18C,

the Health Authority shall consult any other Health Authority in whose area reside individuals who are expected to be on the doctor's list.

(7) For the purposes of this Part of these Regulations, where the prospective patients of a doctor reside in the area of two or more Health Authorities, or in the area of both a Health Authority and a Health Board, "locality" means the geographical area in which such patients reside.

### **Decisions of the Medical Practices Committee**

**12.**—(1) On a reference under regulation 11, the Medical Practices Committee must decide whether the number of doctors undertaking to provide general medical services in the locality is adequate.

(2) When deciding on references under regulation 11, the Medical Practices Committee shall act in accordance with the following paragraphs of this regulation.

(3) In making its decision, the Medical Practices Committee must, in particular, take account of—

- (a) any likely changes in the number of doctors in the locality; and
- (b) any persons performing personal medical services in the locality pursuant to a pilot scheme.

(4) The Medical Practices Committee shall—

- (a) take account of the report (and, in particular, the recommendation referred to in paragraph 9 of Part I of Schedule 3) made by the Health Authority (and any other Health Authority which has made a report pursuant to regulation 11(5)) with respect to the reference;
- (b) where it declares a vacancy, consider in relation to any doctor who would fill that particular vacancy—

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- (i) which of the conditions set out in regulation 13(2) it is appropriate to specify, and
  - (ii) whether it should impose a condition pursuant to regulation 13(1)(c) (and if so, what that condition should be);
  - (c) specify the period (not exceeding 12 months) beginning with the date of the declaration of the vacancy after which a vacancy to which regulation 18A or 18B applies will automatically lapse by effluxion of time; and
  - (d) specify the date by which a vacancy for a sole practitioner must be advertised by the Health Authority pursuant to regulation 18D.
- (5) Subject to paragraph (6), any determination of the Medical Practices Committee shall be the decision of the majority of those members who are present and voting at a meeting of the Committee.
- (6) At any such meeting, four members of the Medical Practices Committee shall form a quorum, and in the case of an equality of votes the Chairman or, where the Chairman is absent for any reason, the person appointed to act as Chairman in his place shall have a second vote which shall be a casting vote.
- (7) The Medical Practices Committee shall give notice in writing of its determination of a reference to the Health Authority which made the reference and to any other Health Authority which made a report pursuant to regulation 11(5), together with a written statement of the reasons for its decision.
- (8) Upon receipt of the written determination and statement from the Medical Practices Committee, the Health Authority must send a copy of that determination and statement to—
- (a) in all cases, the Local Medical Committee; and
  - (b) where regulation 11(2)(b) applies, the doctor concerned.

### **Declaration of vacancies**

- 13.**—(1) If the Medical Practices Committee decides that the number of doctors undertaking to provide general medical services in a locality is not adequate, it—
- (a) must declare one or more vacancies for an additional doctor (and, if more than one, must specify how many);
  - (b) must specify, by reference to one or more conditions of practice relating to hours or the sharing of work, the provision of general medical services for which any additional doctor who is to fill a particular vacancy will be entitled to be remunerated; and
  - (c) may impose the condition that any additional doctor who is to fill a particular vacancy may provide general medical services only in such part of the locality as the Committee may specify.
- (2) Subject to paragraph (3), the conditions referred to in paragraph (1)(b) are that a doctor shall provide such services as—
- (a) a full-time doctor, that is to say a doctor who is to provide general medical services during not less than 26 hours in any week in which he is, pursuant to paragraph 29 of his terms of service, normally available to provide such services;
  - (b) a three-quarter-time doctor, that is to say a doctor who is to provide such services during less than 26 hours, but not less than 19 hours in any such week;
  - (c) a half-time doctor, that is to say a doctor who is to provide such services during less than 19 hours, but not less than 13 hours in any such week;

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- (d) a job-sharing doctor, that is to say a doctor—
  - (i) who is to practise in partnership with another doctor whose name is included in the medical list, and
  - (ii) who is himself to provide such services during less than 26 hours in any such week, and
  - (iii) for whom the hours during which he is to provide such services are, when aggregated with the hours of that other doctor, to amount to not less than 26 hours in any such week; or
- (e) a restricted doctor, that is to say a doctor—
  - (i) who is a restricted list principal or a restricted services principal, and
  - (ii) who is to provide general medical services during such number of hours in any week as shall have been specified in a reference to the Medical Practices Committee pursuant to regulation 11.

(3) The Medical Practices Committee may specify, as alternatives, two or more of the conditions of practice set out in paragraph (2)(a) to (d) and, if it does so, the Health Authority shall select which one of those alternatives is to be imposed in relation to any doctor who would fill that particular vacancy.

(4) In a case to which paragraph (3) applies, the Health Authority shall inform the Medical Practices Committee of the condition of practice that it has selected.

#### **Report by Health Authority to Medical Practices Committee**

14. A Health Authority shall, at least once in every three years, make a report to the Medical Practices Committee containing the information set out in Part II of Schedule 3, to enable the Medical Practices Committee to judge the adequacy of the provision of general medical services in the area or its different localities.

#### **Variation and revocation of decisions of the Medical Practices Committee**

15.—(1) Subject to paragraph (2), on an application by a Health Authority which made the original reference pursuant to regulation 11(1), the Medical Practices Committee may—

- (a) (except in cases where an additional doctor has already been nominated or approved pursuant to regulation 18A, 18B or 18C), revoke a decision made pursuant to regulation 13(1) to declare a vacancy for an additional doctor in a locality;
- (b) in the case of a condition imposed pursuant to regulation 13(1)(b) (or such a condition as varied pursuant to this regulation)—
  - (i) vary the condition by imposing in relation to any doctor who fills or would fill that particular vacancy such other condition set out in regulation 13(2)(a) to (e) as has been requested in the application, or
  - (ii) specify as alternatives two or more of the conditions set out in regulation 13(2) (a) to (d), in which case the Health Authority shall select which of those alternatives is to be imposed on any doctor who fills or would fill that particular vacancy and shall inform the Medical Practices Committee of the condition so selected;
- (c) in the case of a condition imposed pursuant to regulation 13(1)(c) (or such a condition as varied pursuant to this regulation), revoke the condition, or vary it by specifying such other part of the locality in which the doctor is to be excluded from providing general medical services as the Committee considers appropriate; or

(d) refuse to vary or revoke the decision in question.

(2) The Health Authority may not make an application for any decision referred to in paragraph (1)(b) or (c) without the written consent of any doctor to whom the existing condition applies.

(3) An application for the purposes of paragraph (1) shall be made in writing and shall include the following information—

- (a) the reasons for the application, including any request as to which condition of practice referred to in regulation 13(1)(b) or (c) the Health Authority wishes the Medical Practices Committee to impose in relation to the doctor who fills, or would fill, the vacancy, and (in the case of an application for a decision referred to in paragraph (1)(b) or (c)) a declaration either that there is no doctor to whom the existing condition applies, or that he has consented in writing to the application;
- (b) where regulation 11(4) applied, a declaration that the Health Authority has consulted any other Health Authority (or, where regulation 18J applied, any Health Board) in whose area a doctor's patients are or are expected to be situated and, where the views of that other Authority or Board differ from those of the Health Authority, details of those differing views;
- (c) a declaration that the Health Authority has consulted any Local Medical Committee for its area (and that any other Health Authority or Health Board in whose area a doctor's patients are or are expected to be situated has also consulted any Local Medical Committee for its area) and a fair reflection in summarised form of the views of that Committee or, as the case may be, those Committees; and
- (d) any other information that the Medical Practices Committee may reasonably require.

(4) Paragraphs (5) and (6) of regulation 12 shall apply in the case of the determination of an application under this regulation as they apply to a determination under that regulation.

(5) In determining an application under this regulation the Medical Practices Committee shall take account of the views of the Health Authority, and of the views of any other Health Authority (or, where regulation 18J applies, any Health Board) and of any Local Medical Committee as set out pursuant to sub-paragraphs (b) and (c) of paragraph (3).

(6) The Medical Practices Committee shall, in all cases, give the Health Authority which made the application a written statement of the reasons for its decision.

(7) In cases where the Health Authority has, at the request or with the consent of a particular doctor, made an application to vary a condition imposed pursuant to regulation 13(1)(b) or vary or revoke a condition imposed pursuant to regulation 13(1)(c) then the Health Authority shall give to that doctor a copy of the written statement referred to in paragraph (6).

#### **Effect of variation or revocation**

**16.** A decision by the Medical Practices Committee under regulation 12, 13 or 15 has effect until it is varied or revoked, or expires by effluxion of time pursuant to regulation 12(4)(c).

#### **Decision by Health Authority as to type of vacancy**

**17.—**(1) This regulation applies where the Medical Practices Committee decides, on a reference by a Health Authority under regulation 11(1), that there is a vacancy for an additional doctor in a locality.

(2) If the Health Authority made a reference pursuant to regulation 11(1) at the request of a particular partnership and—

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- (a) the Authority is satisfied that the additional doctor is required by the partnership because of a reduction in the number of members of the partnership; or
- (b) the Authority considers that it is otherwise appropriate for the additional doctor to be a member of the partnership,

the Authority must agree that the additional doctor should be a member of that partnership, and regulation 18A shall apply.

(3) If the Health Authority made a reference pursuant to regulation 11(1) at the request of a particular sole practitioner (“A”), and the Authority is satisfied that it is appropriate for the additional doctor to be in partnership with A, the Authority must agree that the additional doctor should be in partnership with A, and regulation 18A shall apply.

- (4) Otherwise, the Health Authority must decide whether the additional doctor should be—
  - (a) a member of a partnership (but not a particular partnership), in which case regulation 18B shall apply; or
  - (b) a sole practitioner, in which case regulation 18C shall apply.

(5) In making its decision the Health Authority must take account, in particular, of the needs of the patients in the locality.

(6) Where paragraph (2) or (3) applies, the Health Authority shall give notice in writing of its decision to the partnership or sole practitioner concerned together with a written statement of the reasons for its decision; and where the Authority agrees that the additional doctor should be in partnership with the partnership or sole practitioner concerned the notice must include the criteria which, pursuant to regulation 18A(4), are to apply to the approval of the additional doctor by the Health Authority.

(7) Where a Health Authority is not satisfied that the additional doctor is required by a particular partnership pursuant to paragraph (2), or that it is appropriate that the additional doctor should be in partnership with the particular sole practitioner pursuant to paragraph (3), it shall so inform the partnership or the sole practitioner concerned together with a written statement of the reasons for its decision.

### **Consultation with Local Medical Committee**

**18.** A Health Authority must consult the Local Medical Committee before it does any of the following—

- (a) makes a reference under regulation 11(1),
- (b) makes a selection of a condition of practice under regulation 13(3),
- (c) makes an application for a variation or revocation under regulation 15,
- (d) makes a decision as to whether an additional doctor should be a member of a partnership or a sole practitioner under regulation 17(4),
- (e) sets or agrees criteria pursuant to regulation 18A(4), 18B(2) or (7) or 18D(5), or
- (f) nominates or approves an additional doctor pursuant to regulation 18A, 18B or 18C,

and, where regulation 11(2)(a) or paragraph (b), (c), (d), (e) or (f) of this regulation applies, the Health Authority must give the Local Medical Committee written notice of its decision and the reasons for it.

### *Filling vacancies*

#### **Particular partnership vacancies**

**18A.**—(1) This regulation applies if a Health Authority has agreed (under regulation 17(2) or (3) respectively) that an additional doctor should be a member of a particular partnership or be in partnership with a particular sole practitioner.

(2) In such cases, the members of the partnership or (as the case may be) the sole practitioner may nominate a doctor as the additional doctor and shall apply to the Authority for its approval of the person so nominated.

(3) Such an application shall include the information and undertakings given by the additional doctor so nominated set out in Part III of Schedule 3.

(4) The approval by the Health Authority of the doctor so nominated shall (subject to regulation 18E) be subject to such criteria reasonably relating to the skills, knowledge and experience of the additional doctor, and to the needs of the patients of the practice concerned, as may be agreed between the Health Authority and the partnership or sole practitioner.

(5) The Health Authority shall not approve any doctor so nominated until the criteria referred to in paragraph (4) have been agreed.

#### **General partnership vacancies**

**18B.**—(1) This regulation applies if a Health Authority has decided under regulation 17(4) (a) that an additional doctor should be a member of a partnership (but not a member of a particular partnership).

(2) In such cases, the Health Authority shall—

- (a) take reasonable steps to bring to the attention of doctors in the locality the existence of the vacancy for an additional doctor as a member of a partnership (together with details of any criteria that the Health Authority intends to apply in making its selection of the sole practitioner who, or partnership which, is to be permitted to nominate a partner or an additional partner); and
- (b) invite applications from sole practitioners and partnerships in the locality wishing to nominate a partner or an additional partner,

and any such applications shall be dealt with by the Health Authority in accordance with the following provisions of this regulation.

(3) The criteria referred to in paragraph (2)(a) must reasonably relate to the accessibility of general medical services on the basis of patient need, any relevant financial considerations and the suitability of the available premises in relation to the services provided or intended to be provided.

(4) Where the Health Authority receives more than one application in connection with such a vacancy it shall select, in accordance with any criteria published pursuant to paragraph (2) (a), the sole practitioner or partnership which is to be permitted to nominate a partner or an additional partner.

(5) Before making its selection for the purposes of paragraph (4), the Health Authority may give to applicants an opportunity of making—

- (a) representations to it in writing; and
- (b) in relation to such applicant or applicants as the Health Authority sees fit, representations to it in person.

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(6) The Health Authority must notify each applicant in writing whether or not he has been selected.

(7) Subject to regulation 18E, the sole practitioner or partnership so selected shall then be permitted to nominate a partner or an additional partner in accordance with such criteria as may be agreed between the Health Authority and sole practitioner or partnership.

(8) For the purposes of paragraph (7), such criteria must reasonable relate to the skills, knowledge and experience of the additional doctor and to the needs of the patients of the practice concerned.

(9) If the Health Authority and the selected sole practitioner or partnership cannot agree the criteria referred to in paragraph (7), then the Health Authority may rescind the selection, and if it does so, it shall then make a further selection in accordance with the provisions of this regulation.

(10) The sole practitioner, or the partnership, so selected must apply to the Health Authority for its approval of the person so nominated, and such application shall include the information and undertakings relating to the additional doctor so nominated set out in Part III of Schedule 3.

#### **Vacancies for sole practitioners**

**18C.**—(1) This regulation applies if a Health Authority has decided under regulation 17(4)(b) that an additional practitioner should be a sole practitioner, and has advertised the vacancy in accordance with regulation 18D.

(2) A medical practitioner may apply to the Health Authority to be nominated as the additional practitioner, and such an application shall include the information and undertakings set out in Part III of Schedule 3.

(3) An application under this regulation in respect of a vacancy shall be dealt with by the Health Authority in accordance with the following provisions of this regulation.

(4) Where the Health Authority receives more than one such application in connection with any vacancy, it shall (subject to regulation 18E) nominate the applicant who, in its view, best satisfies any criteria published by the Health Authority pursuant to regulation 18D(5).

(5) Before making its nomination for the purposes of paragraph (4), the Health Authority may give to applicants for the vacancy an opportunity of making—

- (a) representations to it in writing; and
- (b) in relation to such applicant or applicants as the Health Authority sees fit, representations to it in person.

(6) When the Health Authority has nominated an applicant for the vacancy, it shall—

- (a) notify each applicant in writing whether or not he has been nominated; and
- (b) inform any applicant who has not been nominated of his right of appeal to the Secretary of State under regulation 18G.

(7) Where a Health Authority rejects all applications for a vacancy, it shall then proceed to give a further notice of the vacancy pursuant to, and in accordance with, the provisions of regulation 18D except where the time limit specified pursuant to regulation 12(4)(d) for advertising a vacancy has expired, or will do so before a further notice of the vacancy can reasonably be given, in which case (subject to paragraph (8)), the Health Authority must make a further reference to the Medical Practices Committee pursuant to regulation 11(1).

(8) No such further reference shall be made until the expiry of the period of 21 days referred to in regulation 18G(4) or, if an appeal is lodged under regulation 18G, until that appeal is dismissed.

### **Advertisement of vacancies for sole practitioners**

**18D.**—(1) This regulation applies where—

- (a) the Medical Practices Committee has decided, pursuant to regulation 13, that there is, or will be, a vacancy for an additional doctor in any locality; and
- (b) regulation 17(4)(b) applies.

(2) Where this regulation applies, the Health Authority shall, within such period as the Medical Practices Committee has specified pursuant to regulation 12(4)(d), give notice of the vacancy in accordance with paragraphs (3) and (4).

(3) A notice of a vacancy shall include—

- (a) details of the nature and location of the vacancy;
- (b) details of any condition relating to the vacancy imposed by the Medical Practices Committee pursuant to regulation 13(1)(b) or (c); and
- (c) the date by which any application to fill the vacancy must be given to the Health Authority,

and shall also include such other information about the vacancy or the locality as the Health Authority considers appropriate.

(4) A notice of a vacancy shall be published in such manner as appears to the Health Authority to be likely to bring the vacancy to the attention of doctors within and outside its area.

(5) When responding to—

- (a) a request for information about a practice vacancy; or
- (b) a request for an application form for a vacancy,

the Health Authority shall bring to the attention of the person making the request the criteria that the Health Authority intend (subject to regulation 18E) to apply in nominating a doctor to fill the vacancy.

(6) Such criteria shall be reasonably related to the skills, knowledge and experience to be possessed by the doctor to be nominated, and to the needs of the patients in the locality.

### **Criteria for approval and nomination**

**18E.**—(1) A Health Authority shall not approve an additional doctor under regulation 18A or 18B, or nominate him under regulation 18C—

- (a) unless he is suitably experienced (within the meaning of section 31 of the Act<sup>(1)</sup>);
- (b) unless he is able to satisfy the Health Authority that he has that knowledge of English which, in the interests of himself and his patients, is necessary for the provision of general medical services in the Authority's area;
- (c) where he has attained the age of 70 years;
- (d) where he is disqualified, or treated as disqualified, from inclusion in the Health Authority's medical list by virtue of a direction of the Tribunal (or by virtue of any corresponding direction under any corresponding power in force in Scotland or Northern Ireland).

(2) A Health Authority may refuse to approve any additional doctor under regulation 18A or 18B or to nominate him under regulation 18C on the following additional grounds—

- (a) that he does not adequately fulfil the criteria referred to in regulations 18A(4), 18B(7) or 18D(5); or

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(1) 1977 c. 49; section 31 has been amended by section 32(3) of the National Health Service (Primary Care) Act 1997 (c. 46).

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(b) that his entry in the Medical Register is subject to conditions imposed pursuant to a direction given by the Professional Conduct Committee under section 36 of the Medical Act 1983(2), or by the Health Committee under section 37 of that Act; pursuant to an order of either of those Committees or of the Preliminary Proceedings Committee under section 42 of that Act; or pursuant to a direction given by the Committee on Professional Performance made under section 36A of that Act.

(3) When refusing to nominate or approve an additional doctor, the Health Authority shall inform the doctor of any right of appeal to the Secretary of State under regulation 18G.

### **Entry on to medical list**

**18F.**—(1) Subject to paragraph (3), following nomination or approval of an additional doctor whose name is not included in the Health Authority’s medical list, the Authority (and, where applicable, any other Authority referred to in paragraph (2)) shall enter his name on its medical list, and shall inform the Medical Practices Committee that it has done so.

(2) The other Authorities are those which include any part of the locality in respect of which the vacancy was declared or (where the Medical Practices Committee has imposed a condition pursuant to regulation 13(1)(c)), those which include any part of the specified locality.

(3) Where a Health Authority nominates or approves an additional doctor pursuant to regulation 18A, 18B or 18C, the name of the additional doctor shall not be included in the Authority’s medical list during the period for bringing an appeal to the Secretary of State pursuant to regulation 18G, or, if an appeal is brought, until such time as that appeal has been dismissed or withdrawn.

## *Appeals*

### **Appeal to the Secretary of State**

**18G.**—(1) Subject to paragraphs (2) and (3), the following shall have a right of appeal to the Secretary of State on a point of law—

- (a) where regulation 18A or 18B applies, a doctor whom the Health Authority has refused to approve pursuant to regulation 18E(2)(a); or
- (b) a doctor who has applied pursuant to regulation 18C to fill a vacancy as a sole practitioner but who has not been nominated for that vacancy.

(2) There shall be no right of appeal where an application to be included in a medical list or to fill a vacancy as a sole practitioner has been refused pursuant to regulation 18E(1)(a), (c) or (d) or (2)(b).

(3) In a case to which paragraph (1)(a) applies—

- (a) where the sole practitioner who, or partnership which, has nominated the doctor in question fails to confirm to the Secretary of State in writing, within the period of 14 days beginning with the day a notice asking them to do so was sent to them (or within such further period as the Secretary of State may for good cause allow), that they support the doctor’s appeal, his appeal shall not proceed; and
- (b) for the purposes of regulation 18F(3) and paragraph 32(2) of Schedule 2, any appeal not proceeded with shall be deemed to have been dismissed on the expiry of the period referred to in sub-paragraph (a).

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(2) 1983 c. 54, amended by the Medical (Professional Performance) Act 1995 c. 51.

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(4) Subject to paragraph (5), a doctor may appeal by giving to the Secretary of State a notice of appeal within the period of 21 days beginning with the date on which notice of the decision of the Health Authority is sent to him.

(5) Where a Health Authority has rejected all applications for a vacancy pursuant to regulation 18C(7), the period of 21 days referred to in paragraph (4) shall begin to run on the day—

- (a) the Health Authority nominates an additional doctor pursuant to regulation 18C, or
- (b) the time limit specified pursuant to regulation 12(4)(d) expires,

whichever is the sooner.

(6) A notice of appeal shall contain a concise statement of any point of law in respect of which the doctor contends that the decision of the Health Authority is erroneous and shall be signed by the doctor (or by a person authorised to do so on his behalf).

(7) If it appears to the Secretary of State that the appeal is of such a nature that it can be properly determined without an oral hearing, he may dispense with an oral hearing and determine the appeal without one, and shall communicate his decision on the appeal, together with the reasons for it, in writing to the appellant and the Health Authority.

(8) If the Secretary of State is of the opinion that an oral hearing is required, he shall appoint—

- (a) a person who is a barrister or a solicitor; and
- (b) where the Secretary of State sees fit, one or more other persons,

to hear the appeal.

(9) An oral hearing shall take place at such time and place as the Secretary of State may direct and, not later than the beginning of the period of 14 days ending with the date fixed for the hearing, notice of the hearing shall be sent to the appellant, the Health Authority and to such other persons as the Secretary of State may determine as having an interest in the appeal.

(10) Subject to paragraphs (11) and (12), the procedure of the oral hearing shall be such as the person or persons hearing the appeal shall determine.

(11) The appellant and any of the parties to whom notice of the hearing has been given may attend and be heard in person or by Counsel or solicitor or other representative.

(12) The Health Authority may be represented at the hearing by any duly authorised officer or member or by Counsel or solicitor.

(13) The persons hearing the appeal shall make a report to the Secretary of State stating the relevant facts and their conclusions and the Secretary of State, after taking the report into consideration, shall give his decision and communicate it, together with the reasons for it, in writing to—

- (a) the appellant;
- (b) the Health Authority; and
- (c) any other person who, under paragraph (9), has been served with notice of the hearing.

(14) Where the Secretary of State allows an appeal he shall remit the application to the Health Authority for reconsideration and—

- (a) he shall give to that Health Authority such directions as appear to him to be desirable with a view to ensuring a proper determination of the application in accordance with the relevant law; and
- (b) the Health Authority shall re-determine the application and in so doing shall comply with any such directions.

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### **Cases not requiring a reference to the Medical Practices Committee**

**18H.**—(1) Except in a case falling within paragraph (2), and subject to regulation 18J, a Health Authority may decide not to make a reference to the Medical Practices Committee pursuant to regulation 11(1) in the circumstances referred to in regulation 11(2)(c) where—

- (a) the doctor who has died, or who has withdrawn or been removed from the Authority's medical list, was a full-time doctor practising as a member of a partnership; and
- (b) the remaining members of that partnership wish to nominate, as a partner, a replacement doctor and make a written application to the Health Authority to that effect,

and regulation 18I shall apply.

(2) Where a replacement doctor's patients would be situated in the area of more than one Health Authority, any of those Health Authorities may elect to deal separately with the prospective patients residing in its area and, where it does so elect, shall then make a reference to the Medical Practices Committee in accordance with regulation 11(1).

(3) Where two or more Health Authorities agree to deal jointly with the prospective patients residing in their areas, it shall be the Health Authority in whose area reside the largest number of the prospective patients of the replacement doctor which shall decide whether to grant the application under paragraph (1)(b) and, if it does so, shall then proceed in accordance with regulation 18I.

### **Procedure in cases to which regulation 18H applies**

**18I.**—(1) If the Health Authority grants the application under regulation 18H(1)(b) made by the members of the partnership—

- (a) it shall so notify them in writing; and
- (b) the replacement doctor shall (subject to paragraph (10)) be subject to the same conditions of practice as were imposed, pursuant to regulation 13(1)(b) or (c) (or, where those conditions of practice were imposed prior to the coming into force of these regulations, then to the conditions of practice that were imposed pursuant to regulations made under section 33(4) of the Act) on the doctor who has died, or who has withdrawn or been removed from the Health Authority's medical list,

but if it does not grant the application the Health Authority shall give the partnership reasons in writing why it did not do so.

(2) Where the application was granted, the remaining members of the partnership may nominate a doctor as the replacement doctor and shall then apply to the Health Authority for its approval of the doctor so nominated.

(3) Such an application shall include the information and undertakings given by the replacement doctor so nominated set out in Part III of Schedule 3.

(4) The approval by the Health Authority of the doctor so nominated shall (subject to paragraph (6)) be subject to such criteria reasonably relating to the skills, knowledge and experience of the additional doctor, and to the needs of the patients of the practice, as may be agreed between the Health Authority and the partnership.

(5) The Health Authority shall not approve any doctor so nominated until the criteria referred to in paragraph (4) have been agreed.

- (6) A Health Authority—
  - (a) shall not approve a replacement doctor—

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- (i) unless he is suitably experienced (within the meaning of section 31 of the Act<sup>(3)</sup>),
  - (ii) unless he is able to satisfy the Health Authority that he has that knowledge of English which, in the interests of himself and his patients, is necessary for the provision of general medical services in the Authority's area,
  - (iii) where he has attained the age of 70 years,
  - (iv) where he is disqualified, or treated as disqualified, from inclusion in a Health Authority's medical list by virtue of a direction of the Tribunal (or by virtue of any corresponding direction under any corresponding power in force in Scotland or Northern Ireland), and
- (b) may refuse to approve a replacement doctor on the following additional grounds—
- (i) that he does not adequately fulfill the agreed criteria, or
  - (ii) that his entry in the Medical Register is subject to conditions imposed pursuant to a direction given by the Professional Conduct Committee under section 36 of the Medical Act 1983<sup>(4)</sup>, or by the Health Committee under section 37 of that Act; pursuant to an order of either of those Committees or of the Preliminary Proceedings Committee under section 42 of that Act; or pursuant to a direction given by the Committee on Professional Performance made under section 36A of that Act.

(7) Where the Health Authority approves a replacement doctor it (and, where applicable, any other Authority referred to in regulation 18H(3)), shall enter his name on its medical list and shall inform the Medical Practices Committee that it has done so.

(8) Subject to paragraph (9), where a Health Authority refuses to approve a replacement doctor—

- (a) except where an application for approval has been refused pursuant to paragraph (6) (a)(i), (iii), or (iv) or (b)(ii), that doctor shall have a right of appeal on a point of law to the Secretary of State, to which the provisions of regulation 18G(4) to (14) shall apply; and
- (b) the Health Authority shall so inform him and shall give him a written statement of the reasons for its decision.

(9) Where a doctor does appeal under paragraph (8), unless the remaining members of the partnership confirm to the Secretary of State in writing within the period of 14 days beginning on the day a notice asking them to do so was sent to them (or within such further period as the Secretary of State may for good cause allow) that they support the doctor's appeal, his appeal shall not proceed and, for the purposes of paragraph 32(2) of Schedule 2, any appeal not proceeded with shall be deemed to have been dismissed on the expiry of such period.

(10) A Health Authority which has approved a replacement doctor pursuant to this regulation may thereafter apply to the Medical Practices Committee—

- (a) in the case of a condition under regulation 13(1)(b) imposed pursuant to paragraph (1)(b), to vary that condition; or
- (b) in the case of a condition under regulation 13(1)(c) imposed pursuant to paragraph (1)(b), to vary or revoke that condition,

and when dealing with such an application, the Medical Practices Committee shall proceed in accordance with the provisions of regulation 15(1)(b) to (7), and regulation 15(3)(b)

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(3) 1977 c. 49; section 31 has been amended by section 32(2) of the National Health Service (Primary Care) Act 1997 (c. 46).

(4) 1983 c. 54, amended by the Medical (Professional Performance) Act 1995 c. 51.

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shall have effect as if for the words “regulation 11(4)” there were substituted the words “regulation 18H(3)”.

(11) Before—

- (a) agreeing criteria under paragraph (4), or
- (b) approving a replacement doctor, or
- (c) making an application to the Medical Practices Committee under paragraph (10), or
- (d) (where applicable), making a selection under regulation 15(1)(b)(ii) (as applied by paragraph (10)),

a Health Authority shall consult the Local Medical Committee and any other Health Authority in whose area reside individuals who are, or are expected to be, on the replacement doctor’s list.

### *Miscellaneous*

#### **Cross-border vacancies**

**18J.**—(1) This regulation applies where—

- (a) the circumstances referred to in regulation 11(2) apply; and
- (b) a doctor’s prospective patients are situated in the area of one or more Health Authorities in England and of one or more Health Boards in Scotland.

(2) A Health Authority may elect to deal separately with the prospective patients residing in its area, and where it does so elect, shall then make the reference and report to the Medical Practices Committee under regulation 11(1) or, as the case may be, proceed in accordance with regulations 18H and 18I.

(3) Where two or more Health Authorities agree to deal jointly with prospective patients residing in their areas, the Health Authority in whose area reside the largest number of the prospective patients of the additional doctor shall make the reference and report to the Medical Practices Committee under regulation 11(1) or, as the case may be, proceed in accordance with regulations 18H and 18I.

(4) However, if one or more Health Authorities and one or more Health Boards agree to deal jointly with prospective patients residing in their areas, and the largest number of those prospective patients reside in the locality of one of the Health Authorities, it shall be that Health Authority which shall make the reference and report to the Medical Practices Committee under regulation 11(1) or, as the case may be, proceed in accordance with regulations 18H and 18I.

(5) Where a reference is made under regulation 11(1) and the Medical Practices Committee decides that there is a vacancy for an additional doctor in the locality, the Health Authority which made the reference shall then (subject to paragraph (6)) deal with the vacancy in accordance with the provisions contained in this Part of these Regulations.

(6) Any Health Authority in whose area will reside any patient who is expected to be on the doctor’s list of patients (other than the Health Authority which makes the required reference pursuant to regulation 11(1)) shall make a report to the Medical Practices Committee containing only the information set out in paragraphs 1, 5, 6 and 7 of Schedule 3.

(7) Before—

- (a) making any report pursuant to regulation 11(1);
- (b) making a selection of a condition of practice pursuant to regulation 13(3);
- (c) making a decision as to whether an additional doctor should be a member of a partnership or a sole practitioner pursuant to regulation 17(4);

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- (d) setting or agreeing criteria pursuant to regulation 18A(4), 18B(2) or (7), 18D(5) or 18I(4);
- (e) granting an application pursuant to regulation 18I(1)(a); or
- (f) nominating or approving an additional or replacement doctor pursuant to regulation 18A, 18B, 18C or 18I,

the Health Authority must consult the Local Medical Committee and any other Health Authority or Health Board in whose area reside individuals who are, or are expected to be, on the doctor's list of patients.

(8) Where, under any provision of regulations made under section 19B(3)(c) of the National Health Service (Scotland) Act 1978(5) corresponding to this regulation, a Health Board has nominated or approved an additional or replacement doctor in respect of prospective patients some of whom live in the area of a Health Authority, that Health Authority shall enter the name of that additional practitioner in its medical list, subject to the following being met—

- (a) any requirement as to consultation in the same terms as paragraph (7); and
- (b) the criteria set out in regulation 18E(1) or 18I(6)(a).

#### **Practice vacancies where patients are subject to pilot scheme proposals**

**18K.**—(1) Paragraph (2) applies where—

- (a) a Health Authority—
  - (i) intends, or has been asked, to make a reference to the Medical Practices Committee pursuant to regulation 11(1) or, a reference having been made, the Medical Practices Committee is considering that reference pursuant to regulation 12, or has declared a vacancy for an additional doctor pursuant to regulation 13(1)(a), or
  - (ii) has received an application relating to the nomination of a replacement doctor pursuant to regulation 18H or, having granted such an application, is considering whether to approve a replacement doctor; and
- (b) the Health Authority receives or has received a request under section 4 of the 1997 Act to prepare proposals for a pilot scheme and is under a duty to comply with that request or has done so; and
- (c) in the Health Authority's opinion those proposals relate, or would relate, to more than half of the patients it expects to be on the list of any doctor nominated or approved to fill the vacancy or any replacement doctor; and
- (d) either—
  - (i) where regulation 11(1) applies, the Health Authority has not yet made a reference to the Medical Practices Committee, or
  - (ii) where a reference has been made to the Medical Practices Committee, the Committee has not yet determined it in accordance with regulations 12 and 13, or
  - (iii) where the Medical Practices Committee has determined that a vacancy exists, or will exist, for an additional doctor in the locality, the Health Authority has not yet nominated or approved an additional doctor pursuant to regulation 18A, 18B or 18C, or

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(5) 1978 c. 29.

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- (iv) where the Health Authority has not yet granted an application for a replacement doctor or, where it has already done so, has not yet approved a replacement doctor pursuant to regulation 18I.
- (2) In a case referred to in paragraph (1), without prejudice to any steps that may already have been taken—
- (a) a Health Authority shall not—
    - (i) make a reference to the Medical Practices Committee pursuant to regulation 11(1), or
    - (ii) decide whether an additional doctor should be a member of a partnership or a sole practitioner pursuant to regulation 17(4), or
    - (iii) grant an application for a replacement doctor pursuant to regulation 18I(1)(a), or
    - (iv) nominate or approve an additional or replacement doctor pursuant to regulation 18A, 18B, 18C or 18I, or
    - (v) give notice or further notice of the vacancy in accordance with regulation 18D; and
  - (b) the Medical Practices Committee shall not begin to consider, or shall not further consider, pursuant to regulations 12 and 13, any reference received by it which it has not already determined,

until such time as one of the events set out in paragraph (3) has occurred.

- (3) The events referred to in paragraph (2) are that—
- (a) the proposals referred to in paragraph (1)(c) are rejected by the Secretary of State pursuant to section 5(1)(c) of the 1997 Act; or
  - (b) the proposals are withdrawn before the Secretary of State has made his decision under section 5 of the 1997 Act; or
  - (c) a pilot scheme implemented as a result of the proposals comes to an end, whether pursuant to a direction of the Secretary of State given under section 8(4) of the 1997 Act, or otherwise.
- (4) The Health Authority shall forthwith inform the Medical Practices Committee—
- (a) if paragraph (1) applies, and if so—
    - (i) whether paragraph (i) or (ii) of paragraph (1)(a) applies, and
    - (ii) whether paragraph (i) or (iii) of paragraph (1)(d) applies;
  - (b) if the Secretary of State approves the proposals in question (whether with or without modification); and
  - (c) where one of the events referred to in paragraph (3) occurs, of that fact.

### **Transitional provision**

**18L.**—(1) In relation to—

- (a) a condition imposed on a doctor for the purposes of section 33(4)(a) of the Act as it had effect before 10th December 1998; or
- (b) a doctor who before that date was by virtue of regulations made under section 23(8) of the National Health Service and Community Care Act 1990(6) treated as having such a condition imposed on him,

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(6) 1990 c. 19.

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the condition referred to in the provision of these Regulations as they had effect immediately before that date specified in column (1) of the Table below (the nature of which is mentioned in column (2)) shall on and after that date be treated as the condition referred to in the provision of these Regulations referred to in column (3) of that Table (subject to any modification there mentioned), and may be varied in accordance with these Regulations modified by this regulation as if it had been imposed pursuant to the latter provision.

<i>Column (1)</i>	<i>Column (2)</i>	<i>Column (3)</i>
Former provision of these Regulations	Nature of condition	Provision of these Regulations as they have effect from 10th December 1998
Regulation 15(1)(a)	Full-time doctor	Regulation 13(2)(a)
Regulation 15(1)(b)	Three-quarter-time doctor	Regulation 13(2)(b)
Regulation 15(1)(c)	Half-time doctor	Regulation 13(2)(c)
Regulation 15(1)(d)	Job-sharing doctor	Regulation 13(2)(d)
Regulation 15(1)(e)	Restricted doctor	Regulation 13(2)(e) (where the reference to the number of hours in any week specified in a reference to the Medical Practices Committee pursuant to regulation 11 shall be construed as a reference to the number of hours in any week specified in the doctor's application pursuant to regulation 5 of these Regulations as they had effect before 10th December 1998).

(2) Any condition referred to in section 33(4)(b) of the Act as it had effect before 10th December 1998 shall be treated on and after that date as the condition referred to in regulation 13(1)(c) above, and may be varied accordingly.

(3) In relation to the variation of any such condition, the reference in regulation 15(1) to the Health Authority which made the original reference pursuant to regulation 11(1) shall be construed as a reference to the Health Authority which sent the doctor's application to the Medical Practices Committee pursuant to regulation 5 or 13 of these Regulations as they had effect before 10th December 1998."